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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2472/2012 & C.M.No.5294/2012

S.K.PANDA

..... Petitioner

Through: Ms.Archana Ramesh, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.A.K.Gautam, Advocate and
Col.R.J.S.Kapany.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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14.09.2015

1. The petitioner complains of arbitrary discharge from service with effect from 30.06.2011. He is aggrieved by the fact that sometime in 2009, when to undergo a course for promotion to the post of Naib Subedar, it was discerned that he was overage and consequently he was not allowed to proceed. The facts of the case are that the petitioner was enrolled as direct recruit Havildar on 29.05.1987. On allegations of misconduct such as overstay of leave for a period of 334 days and 10 days respectively (the latter during the course of Summary Court Martial), he was inflicted with penalty of reduction of rank on 16.05.1992. It is submitted that penalty order was untenable given the declaration of law by the Supreme Court in *Nyadar Singh vs. Union of India* AIR 1988 SC 1979. In these circumstances on 01.06.1993, the petitioner was restored to the post

of Havildar with loss of seniority.

2. Learned counsel highlights that this order is *ex facie* illegal because it in effect validates the reduction in rank – which in the first instance the army could not have resorted to. Learned counsel submits that the petitioner became aware of the loss of his seniority only in 2009 when he was detailed for promotion to Naib Subedar but the order was cancelled. It was contended that given the declaration of law by the Supreme Court in 1988, Indian Army could not have issued a penalty of reduction in rank, thus depriving the petitioner his legitimate entitlement to seniority and further promotion. Since he became aware of the fact that his juniors were promoted earlier only sometime in 2009, he approached the Armed Forces Tribunal but was constrained to withdraw those proceedings since there was an objection to jurisdiction.

3. Learned counsel for the respondent submits at the threshold that even though the original penalty of reduction in rank could not be justified, nevertheless the subsequent order of 01.06.1993, directing loss of seniority and service benefits falls within the four corners of the laws. To say so, learned counsel relies upon Section 71 (g) of the Army Act, 1950 as specifying the same as one of the punishments which can be awarded by court martial.

4. The factual matrix would disclose that the petitioner was inflicted with a penalty in rank. The case of **Nyadar Singh** (supra) is an authority for the purpose that a direct recruit cannot be relegated to position lower than what he was appointed to. Therefore, to the extent the petitioner argues that the punishment of reduction in rank

was illegal, there cannot be any dispute. At the same time, this court is of the opinion that there are two reasons why relief cannot and should not be granted in this case. The first is that the substituted order of 01.06.1993 clearly justifies that the petitioner would be treated as a Havildar with loss of seniority. This order was made known to the petitioner who made no effort to challenge it. Secondly and most substantially Section 71 (g) directs that “*forfeiture of seniority of rank in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers....*” is one of the penalties that can be imposed consequent upon the findings of the court martial. That course appears to have been adopted in this case. There is no dispute that the Summary Court Martial found the petitioner to have overstayed leave for 334 days in the first instance and for 10 days subsequently.

5. For the above reasons, this court is of the opinion that there is no merit in the claim. The petition and pending application are consequently dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 14, 2015

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